

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ESTATE OF EDDIE A. MUNIZ,

Plaintiff,

v.

GENETECH, INC., *et. al.*,

Defendants.

Case No. 11-11489

Honorable John Corbett O'Meara

**ORDER GRANTING PLAINTIFF'S APRIL 21, 2011
MOTION TO TRANSFER**

This matter came before the court on plaintiff Estate of Eddie A. Muniz's April 21, 2011 ex parte motion to transfer the action to the United States District Court for the Western District of Michigan. Defendants filed a response May 4, 2011. Defendants also filed a motion to dismiss May 4, 2011, to which Plaintiff filed a response May 25, 2011. Defendants subsequently filed a motion on June 7, 2011, to re-assign the case as a companion to others in this district. Plaintiff filed a response to that motion June 10, 2011; and Defendants filed a reply June 13, 2011. Pursuant to Local Rule 7.1(f)(2), no oral argument was heard.

Plaintiff's counsel filed this products liability action in this court April 8, 2011, and two weeks later filed an ex parte motion to transfer the action after realizing the case should have been filed in the Western District. Plaintiff seeks to transfer, rather than to dismiss, to avoid potential statute of limitations problems.

The court finds that it is in the interests of justice to transfer the case. "[R]easons for transferring a case to a proper forum rather than dismissing 'are especially compelling if the statute of limitations has run since the commencement of the action, so that dismissal might prevent the

institution of a new suit by the plaintiff and a resolution on the merits.’’ Jackson v. L & F Martin Landscape, 2009 WL 1935931 (6th Cir. 2009)(quoting 14D Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3827, at 587 (3d ed. 2007)). Furthermore, Defendants will not be prejudiced by the transfer.

ORDER

It is hereby **ORDERED** that Plaintiff’s April 21, 2001 motion to transfer to the Western District is **GRANTED**.

It is further **ORDERED** that, pursuant to 28 U.S.C. § 1406(1), this action is **TRANSFERRED** to the United States District Court for the Western District of Michigan.

s/John Corbett O'Meara
United States District Judge

Date: June 20, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, June 20, 2011, using the ECF system.

s/William Barkholz
Case Manager